IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 43 of 2002

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INS.CO.LTD.

Versus

MANIBEN W/O FATAHBHAI BANABHAIKHANT

Appearance:

MR KK NAIR for Appellant

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.H.KADRI

Date of decision: 08/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the respective parties. Appeal admitted. Mr. R.N. Shah appears for respondent no.1-original applicant and waives service of notice in the appeal.

2. On a joint request by learned counsel for the respective parties this appeal is taken up for hearing today.

3. This is an appeal under section 30 of the Workmen's Compensation Act, 1984, at the instance of the Insurance Company challenging the judgement and award of the Commissioner for Workmen's Compensation, Vadodara, in W.C. Case N.40 of 1998.

4. The only point urged in the present appeal by the insurer is that the Tribunal has, through error and oversight, applied the provisions of the amended Act viz. Section 4(1)(a), which came into effect only on 15th September 1995, whereas the accident had occurred on 21st June 1993.

5. There cannot be any controversy that the amended provision is prospective in nature. The Supreme Court has laid down in the case of Kerala State Electricity Board Vs. Valsala K., reported in 2000 ACJ 5, that the said amended provision is not retrospective.

6. The clear consequence of this legal position is that the amount of compensation which would be payable on the facts of the case would be based on the statutory provisions which were in force (prior to the amendment) on the date of the accident.

7. On the facts of the case, therefore, it is agreed between the learned counsel that on an appropriate calculation being made, the compensation would amount to Rs.87,980/-.

8. There is no controversy as regards the interest payable at the rate of 6% per annum in view of the statutory provisions applicable on the date of the accident.

9. As a result thereof, the impugned award requires to be modified. Accordingly we hold that the claimants would be entitled to compensation in the sum of Rs.87,980/- together with interest at the rate of 6% per

annum from the date of the accident till realisation.

10. It is clarified that the impugned judgement and award are modified only to the aforesaid extent and the rest of the award stands confirmed. The appeal is, therefore, partly allowed with no order as to costs. Decree accordingly.

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